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SENATE BILL 445

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO CIVIL ACTIONS; IMPOSING CONDITIONS AND RESTRICTIONS
ON BRINGING AN ACTION AGAINST A CONSTRUCTION PROFESSIONAL BASED
ON DEFECTS IN CONSTRUCTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Construction Defect Claims Act".

Section 2. DEFINITIONS.--As used in the Construction
Defect Claims Act:

A. "action" means a civil action for damages or
indemnity brought against a construction professional that
asserts a claim based on a defect in the construction of a
residence or in the substantial remodel of a residence, but
"action" does not include an action in tort alleging personal
injury or wrongful death resulting from a construction defect;

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1 B. "construction professional" means a person
2 providing the design or construction of a residence or
3 supervision, inspection or observation of the construction of a
4 residence;

5 C. "homeowner" means a person that contracts with a
6 construction professional for the construction, substantial
7 remodel, construction and sale or substantial remodel and sale
8 of a residence;

9 D. "residence" means a single-family dwelling;

10 E. "serve" or "service" means personal delivery or
11 delivery by certified mail to the last known address of the
12 addressee; and

13 F. "substantial remodel" means a remodel of a
14 residence, the total cost of which exceeds one-half of the
15 value of the residence as determined for property taxation
16 purposes for the year in which the contract for the remodel
17 work was made.

18 Section 3. CONSTRUCTION DEFECT ACTION-- NOTICE OF CLAIM -
19 RESPONSE-- COMMENCING AN ACTION. --

20 A. In every action against a construction
21 professional, a homeowner shall serve a written notice of claim
22 on the construction professional no later than forty-five days
23 before filing an action. The notice of claim shall state that
24 the homeowner asserts a construction defect claim against the
25 construction professional and shall describe the claim in

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1 sufficient detail to determine the general nature of the
2 defect.

3 B. Within fourteen days after service of a notice
4 of claim, a construction professional shall serve a written
5 response on the homeowner. The written response shall:

6 (1) propose to inspect the residence that is
7 the subject of the claim and to complete the inspection within
8 a specified time frame and shall include a statement that,
9 based on the inspection, the construction professional shall
10 offer to remedy the defect, compromise the claim by payment or
11 dispute the claim;

12 (2) offer to compromise and settle the
13 homeowner's claim without inspection by:

14 (a) monetary payment; or
15 (b) purchase of the homeowner's
16 residence that is the subject of the claim and payment of the
17 homeowner's reasonable relocation costs; or

18 (3) state that the construction professional
19 disputes the claim and will neither remedy the construction
20 defect nor compromise and settle the claim.

21 C. If a construction professional disputes a claim
22 or does not respond to a homeowner's notice of claim within the
23 time stated in Subsection B of this section, the homeowner may
24 bring an action against the construction professional for the
25 claim described in the notice of claim without further notice.

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1 D. If a homeowner rejects an inspection proposal or
2 settlement offer made by a construction professional, the
3 homeowner shall serve written notice of the homeowner's
4 rejection on the construction professional. After service of
5 the rejection, the homeowner may bring an action against the
6 construction professional for the claim described in the notice
7 of claim.

8 E. If, within thirty days after a homeowner's
9 receipt of a construction professional's response, the
10 construction professional has not received from the homeowner
11 either an acceptance or a rejection of the inspection proposal
12 or settlement offer, then at any time thereafter the
13 construction professional may terminate the proposal or offer
14 by serving written notice to the homeowner, and the homeowner
15 may thereafter bring an action against the construction
16 professional for the claim described in the notice of claim.

17 Section 4. INSPECTION PROCEDURE-- OFFER-- RESPONSE--
18 COMMENCING AN ACTION. --

19 A. If a homeowner elects to allow a construction
20 professional to inspect a residence in accordance with the
21 construction professional's proposal, the homeowner shall
22 provide the construction professional and its contractors or
23 other agents reasonable access to the homeowner's residence
24 during normal working hours to inspect the premises and the
25 claimed defect. Within fourteen days following completion of

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1 the inspection, the construction professional shall serve on
2 the homeowner:

3 (1) a written offer to remedy the construction
4 defect at no cost to the homeowner with a timetable for the
5 completion of construction together with a report of the scope
6 of the inspection, the findings and results of the inspection
7 and a description of the additional construction necessary to
8 remedy the defect described in the claim;

9 (2) a written offer to compromise and settle
10 the claim by monetary payment that may include an express offer
11 to purchase the residence that is the subject of the claim and
12 pay the homeowner's reasonable relocation costs; or

13 (3) a written statement that the construction
14 professional will not proceed further to remedy the defect.

15 B. If a construction professional does not proceed
16 further to remedy a construction defect within an agreed
17 timetable, or if the construction professional fails to comply
18 with the provisions of Subsection A of this section, a
19 homeowner may bring an action against the construction
20 professional for the claim described in the notice of claim
21 without further notice.

22 C. If a homeowner rejects an offer made by a
23 construction professional pursuant to Subsection A of this
24 section to either remedy a construction defect or to compromise
25 and settle claim by monetary payment, the homeowner shall serve

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1 written notice of the homeowner's rejection on the construction
2 professional. After service of the rejection notice, the
3 homeowner may bring an action against the construction
4 professional for the construction defect claim described in the
5 notice of claim.

6 D. If, within thirty days after a homeowner's
7 receipt of a construction professional's offer pursuant to
8 Subsection A of this section, the construction professional has
9 not received from the homeowner either an acceptance or a
10 rejection of the offer, then at any time thereafter the
11 construction professional may terminate the offer by serving
12 written notice to the homeowner, and the homeowner may
13 thereafter bring an action against the construction
14 professional for the construction defect claim described in the
15 notice of claim.

16 E. A homeowner accepting an offer of a construction
17 professional to remedy a construction defect pursuant to
18 Paragraph (1) of Subsection A of this section shall do so by
19 serving the construction professional with a written notice of
20 acceptance within thirty days after receipt of the offer. The
21 homeowner shall provide the construction professional and its
22 contractors or other agents reasonable access to the
23 homeowner's residence during normal working hours to perform
24 and complete the construction by the timetable stated in the
25 offer. The homeowner and construction professional may, by

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1 written mutual agreement, alter the extent of construction or
2 the timetable for completion of construction stated in the
3 offer, including repair of additional defects.

4 F. Nothing in this section prevents a homeowner
5 from commencing an action on a construction defect claim
6 described in a notice of claim if a construction professional
7 fails to perform the construction agreed upon, remedy the
8 defect or perform pursuant to an agreed timetable.

9 Section 5. DISMISSAL WITHOUT PREJUDICE--AMENDMENT OF
10 CLAIMS. --

11 A. An action commenced by a homeowner prior to
12 compliance with the requirements of the Construction Defect
13 Claims Act shall be subject to dismissal without prejudice, and
14 may not be recommenced until the homeowner has complied with
15 the requirements of that act.

16 B. Prior to commencing an action, or after the
17 dismissal of an action without prejudice pursuant to Subsection
18 A of this section, a homeowner may amend a notice of claim to
19 include construction defects discovered after service of the
20 original notice of claim. The homeowner shall comply with the
21 requirements of the Construction Defect Claims Act for the
22 additional claims. The service of an amended notice of claim
23 shall relate back to the original notice of claim for purposes
24 of tolling statutes of limitations and repose. Claims for
25 defects discovered after the commencement or recommencement of

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1 an action may be added to the action only after providing
2 notice of the defect to the construction professional and
3 allowing for response as required under the Construction Defect
4 Claims Act.

5 Section 6. CONSTRUCTION PROFESSIONAL'S RIGHT TO OFFER TO
6 CURE DEFECTS--NOTICE TO HOMEOWNER. --

7 A. Upon entering into a contract for sale,
8 construction or substantial remodel of a residence, a
9 construction professional shall provide notice to each
10 homeowner of the construction professional's right to offer to
11 cure a construction defect before a homeowner may commence an
12 action against the construction professional. Such notice
13 shall be conspicuous and may be included as part of the
14 underlying contract signed by the homeowner.

15 B. The notice required by this section shall be in
16 substantially the following form:

17 "Chapter __, Article __ NMSA 1978 contains important
18 requirements you must follow before you may file a
19 lawsuit for defective construction against the
20 seller or builder of your home. Forty-five days
21 before you file your lawsuit, you must deliver to
22 the seller or builder a written notice of any
23 construction conditions you allege are defective and
24 provide your seller or builder the opportunity to
25 make an offer to repair or pay for the defects. You

1 are not obligated to accept any offer made by the
2 builder or seller. There are strict deadlines and
3 procedures under state law, and failure to follow
4 them may affect your ability to file a lawsuit."

5 C. Notice under this section must be provided to
6 the homeowner in order for the Construction Defect Claims Act
7 to apply to construction defect claims in relation to that
8 residence.

9 Section 7. NO EFFECT ON CERTAIN RELATIONSHIPS AND
10 RIGHTS. --The Construction Defect Claims Act does not affect the
11 employment, agency or contractual relationship between and
12 among homeowners and construction professionals during the
13 process of construction or remodeling, nor does that act
14 preclude the termination of those relationships as allowed
15 under law or negate or otherwise restrict a construction
16 professional's right to access or inspection as provided by
17 law, covenant, easement or contract.